

OP 10-278

ORIGINAL FILED
June 10 2010

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

JUN 10 2010

FORM TO BE USED BY PRISONERS FILING A

PETITION FOR A WRIT OF HABEAS CORPUS

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

UNDER MONT. CODE ANN. § 46-22-101 et seq.

NAME John HARTSOE

PRISON NUMBER UNKNOWN

PLACE OF CONFINEMENT Sanders County Jail

CRIMINAL CAUSE NUMBER DC-08-110

John HARTSOE, Petitioner
(Full Name)

v. now being held in Sanders County Jail
waiting to go to MSP, Respondent
(Name of Warden, Superintendent, or authorized person
having custody of Petitioner).

Instructions

1. To use this form, you must be imprisoned or otherwise restrained in Montana. Mont. Code Ann. § 46-22-101(1).
2. The petition must be neatly handwritten or typed. You must tell the truth and sign the form. If you make a false statement of a material fact you may be prosecuted for perjury.
3. The petition can be filed either in the district court in the county where you are incarcerated, or in the Montana Supreme Court. If you are filing in the district court, send the original to the clerk of the district court in the county where you are incarcerated. If you are filing in the Montana Supreme Court, send the original to the clerk of the Montana Supreme

Court. Also, mail a copy of the motion to each party listed on the Certificate of Service.

4. Habeas corpus cannot be used to attack the validity of your conviction or sentence. Also, it cannot be used to attack the validity of an order revoking a suspended or deferred sentence. Mont. Code Ann. § 46-22-101(2).
5. To get habeas corpus relief, you must show that your imprisonment or restraint is illegal. For example, you may allege that you will be held beyond your proper release date because of failure to properly award good time or credit for time served; that your sentence exceeds the statutory maximum term; that a decision of the parole board results in longer confinement; or that you are being illegally held without bail.
6. If you have any questions about these instructions or about the form, please seek assistance from the designated legal assistant in the institution. IT IS A VIOLATION OF POLICY FOR INMATES TO REQUEST LEGAL ASSISTANCE FROM OTHER INMATES.

PETITION FOR HABEAS CORPUS RELIEF

1. I was convicted of the following criminal offense(s): Aggravated
Assault - Violation of order of protection
2. Judgment on these offenses was entered on (date) February 23 2000
3. I received the following sentence: 30 years
4. Check one: () I pled guilty to these offenses.
(☒) I pled not guilty to these offenses.
5. Check one: (☒) I appealed to the Montana Supreme Court.
() I did not appeal to the Montana Supreme Court.

6. Other than a direct appeal from the judgment of conviction, have you previously filed any petitions, applications or motions with respect to this judgment in any court, state or federal? (☒) Yes (☐) No.

7. If your answer to question 6 was yes, give the following information:

Name of Court: Montana Twentieth Judicial District Court

Nature of Proceeding: Motion to vacate

Grounds Raised: Right to counsel,

RIGHT TO DUE PROCESS,

Result: Denied

8. I assert that I am entitled to habeas corpus relief upon the following grounds:

GROUND ONE: Right to bail as afforded in
bill of rights

SUPPORTING FACTS: Held in jail throughout trial to assure attendance. Was out on bail 18 months without incidence. WAS allowed no visitors. Slept about 1 1/2 hr. each night. By the end of trial couldn't concentrate. Made bad decisions like, 3 times, not offering lesser charges. (6 mo. = 20 yrs.) SEE LETTER + MOTION TO VACATE (P. 5) Jury Hung over 4 hrs.

GROUND TWO: RIGHT TO COUNSEL

SUPPORTING FACTS: SEE 'LETTERS' AND 'MOTION TO VACATE' (P. 2-5/P. 7-13)

GROUND FOUR: Right to a jury trial and to be judged by a jury of my peers.

SUPPORTING FACTS: The Judge states, "So those set of circumstances are not the kind that the court can ~~in~~ consider in a fashion that goes with what the jury found in this matter."

The Judges perception of the 'circumstances' includes the defendant threatening to bulldoze down his house with his wife (Donna) inside, (Sentencing Transcript (S.T.) P.60-L.21-25/P.61-L.1-4) which Donna denies saying, even to this day. (Deposition P.47-L.16-19). The Judge goes on to say, "No one disputes these 'circumstances' occurred."

(S.T.-P.61-L.4). The defendant disputes threatening Donna, resisting arrest, assault with weapon and family member assault. All these charges were dismissed. The Judge bases ~~sentencing~~ her sentence on the recommendation of the State, the probation office, (S.T.-P.65-L.18-20) and the nonexistent "extensive history" of violence. (S.T.-P.49-56).

The State obviously believes the defendant is guilty of all the charges including the two charges the jury found him not guilty of. The PSI quotes only Donnas statements, and then says, "From these facts..." What makes Donnas statements facts? The PSI continues, "...there is probable cause to believe the defendant committed... ASSAULT WITH WEAPON... KIDNAPPING..."

(P.S.I.-P.3). The Jury found the defendant NOT GUILTY of ASSAULT WITH WEAPON and KIDNAPPING! The defendants sentence is contrary to the Jurys findings.

SEE 'ATTACHMENTS'

First
Arrest
(P.1-2)

GROUND THREE: RIGHT to an impartial Judge (BIAS)
RIGHT OT HAVE A CHANGE OF VENUE

SUPPORTING FACTS: The Judge believes the desendant threatened to bulldoze down his house with Donna inside (sentencing transcript - P.60-L.20-24). The Judge believes the desendant was threatening and violent ("extensive history") (P.65-L.21) at first arrest wherein all charges were dismissed (P.65-L.21) CONTRARY TO EYEWITNESS (P.54-L.10-19) (Additional grounds and supporting facts can be stated separately and attached to this petition). SEE 'LETTERS'

Wherefore, Petitioner prays that the Court grant relief to which he may be entitled in this proceeding.

VERIFICATION

STATE OF MONTANA)

County of LAKE) : ss.

I, the petitioner above named, being duly sworn, states as follows:

I have read the foregoing petition for habeas corpus relief and know the contents thereof, and the same is true of my own knowledge, information and belief.

DATED this 3 day of MARCH, 2010.

John S. [Signature]
(Signature of Petitioner)

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing Petition for a

Writ of Habeas Corpus was sent by U.S. mail to the following:

Bullock
Montana Attorney General
P.O. Box 201401
Helena, MT 59620

Department of Corrections Legal Unit
P.O. Box 201301
Helena, MT 59620

County Attorney
(address)

MITCH YOUNG

106 4th Ave East

Polson, mt. 59860

ED Smith

CLERK OF THE MONTANA SUPREME COURT
P.O. BOX 203003
Helena, Mt. 59620-3003

John J. Hart
June 8, 2010